

## Waiver 1999-1

July 22, 1999

Mary Whitehead  
[Address withheld]

The Montgomery County Ethics Commission (the "Commission") has received and reviewed both your June 15, 1999, request for a waiver of a post-county-employment provision of the Montgomery County Public Ethics Law, and the June 15, 1999, supporting memorandum from Assistant Chief Administrative Officer Snead. In particular, you have asked if you may enter into a short-term, part-time, employment relationship with Mondre Energy, Inc., of Philadelphia, P.A., which provides consultant services to the County.

### APPLICABLE LAW

Your request implicates the following provisions of the Montgomery County Ethics Law:

§19A-13.

- (a) A former public employee must not accept employment or assist any party, other than a County agency, in a case, contract, or other specific matter for 10 years after the last date the employee significantly participated in the matter as a public employee.
- (b) For one year after the effective date of termination from County employment, a former public employee must not enter into any employment understanding or arrangement (express, implied, or tacit) with any person or business that contracts with a County agency if the public employee:
  - (1) significantly participated in regulating the person or business; or
  - (2) had official responsibility concerning a contract with the person or business (except a non-discretionary contract with a regulated public utility).
- (c) Significant participation means direct administrative or operating authority to approve, disapprove, or otherwise decide government action with respect to a specific matter, whether the authority is intermediate or final, exercisable alone or with others, and exercised personally or through subordinates. It ordinarily does not include program or legislative oversight, or budget preparation, review, or adoption.

§19A-8

- (c) After receiving a written request, the Commission may waive the prohibitions of Section 19A-13 if it finds that:
  - (1) failing to grant the waiver may reduce the ability of the County to hire or retain highly qualified public employees; or
  - (2) the proposed employment is not likely to create an actual conflict of interest.

**RELEVANT FACTS**

Your request and Ms. Snead's supporting memorandum indicate, in pertinent part:

You are an energy planner for the Montgomery County Department of Environmental Protection who is retiring from County service on July 1, 1999.

You are the only person providing energy policy analysis within County government. In this capacity you have been deeply involved over the past two years in the County's efforts to understand and participate in the statewide move to purchase electricity and natural gas in a deregulated and restructured environment.

You were instrumental in recommending that the County become a party to the Maryland Public Service Commission proceedings on electric utility restructuring and urged the establishment of the Interagency Task Force on Electric Deregulation, which was formed in June 1997.

Among your utility restructuring activities, you draft various written submissions and testimony, participate on behalf of the County in a number of PSC Working Groups and settlement negotiations with PEPCO, provide input to the Office of Intergovernmental Relations with respect to legislative proposals, and provide lead staff support for the activities of the Task Force as they relate to policy issues. Your extensive knowledge of the needs of the County and the workings of the PSC roundtables is unique. No one else in County service has similar experience.

In mid-1998, the Department of Public Works and Transportation, at the suggestion of the Task Force on Electric Deregulation, solicited proposals from offerors for consultant services for some of the technical and legal needs in dealing with electric utility restructuring. You served as one of five members of a Qualifications and Selection Committee who reviewed the proposals and interviewed the candidates. On the unanimous recommendation of the Committee, Mondre Energy, Inc., of Philadelphia, was awarded a contract for a term of one year (FY 99), budgeted at \$275,000, with four one-year options.

Your only involvement with the Mondre Energy contract was as a member of the QSC. You did not draft or negotiate the contract, and you have neither administered nor monitored the contract.

Your departure from County service will leave the County with a vacuum. Although you are intent on retiring, you are willing to work on a short-term, part-time basis. The County has evaluated the option of retaining you on a personal services contract and has decided that it would be preferable if you could provide policy direction in a consulting capacity through an arrangement with Mondre Energy for a minimum of one year and a maximum of two years. Neither you nor the contractor suggested this arrangement.

In support of your request for a waiver, you offered the following:

In replacing you, DEP has determined to fill the position with an energy generalist, someone whose energy-related knowledge is broad and interwoven with environmental linkages, but whose knowledge of utility restructuring issues is limited. This was a conscious decision to seek an employee for the long term rather than an individual with very specialized knowledge.

You and your spouse are building a house in Talbot County and will be leaving Montgomery County by early fall.

You do not wish to work full time, nor to commute to Rockville on a regular basis. You would work for Mondre Energy no more than 20 hours per week, and be paid no more than \$40,000, plus reasonable expenses, over the course of a year. You envision your role as providing the same support to the Task Force and to those involved with electric deregulation for the County as you have been providing while a County employee.

This arrangement would last for a minimum of one year and a maximum of two years, by which time the County will be purchasing its electricity in a competitive market and the consultant's tasks will be complete.

There is no conflict of interest in the proposed arrangement. You have neither administered the [Mondre Energy] contract nor monitored the contractor's work. You do not review or approve the contractor's bills.

In supporting your request, the Assistant CAO has stated, among other things:

[A]llowing [Ms. Whitehead] to work under [the Mondre] contract is cost effective and demonstrates a "best practice" approach.

\* \* \*

Because she will be working on behalf of the County, the proposed employment of Ms. Whitehead by Mondre does not appear to be likely to create an actual conflict of interest. Nor does the proposed employment appear to give the contractor any advantage.

### **DECISION**

Against this unique background, and based on the representations contained in your memorandum and that of the Assistant CAO—especially the fact that this post-county employment was suggested by county representatives as the best means of accommodating the continuing short-term needs of the County—the Commission finds that your short-term, part-time, employment relationship with Mondre Energy, Inc., for the limited purposes and time described in your request will not create an actual conflict of interest and, indeed, is in the best interest of Montgomery County .

The Commission, therefore, waives the provisions of §19A-13 as requested.

Very truly yours,

[signed]

Kenneth C. Jackson, Sr.

Chairman